

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**SILVERSTAR DELIVERY LTD, GOLD
STANDARD TRANSPORTATION AND
AMAZON LOGISTICS, INC., JOINT
EMPLOYERS**

and

Case 07-CA-199193

**LOCAL 337, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,
AFL-CIO**

and

Case 07-CA-200543

KIMBERLY JOHNSON

ORDER¹

The Employer's Petition to Revoke subpoena duces tecum B-1-XK2MLX is denied. The subpoena seeks information relevant to the matters under investigation and describes with sufficient particularity the evidence sought, as required by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations.² Further, the Employer has failed to establish any other legal basis for revoking the subpoena.³

¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel. Member Emanuel took no part in the consideration of this case.

² In considering the petition to revoke, we have evaluated the subpoena in light of the Region's statements that it withdraws par. 48 in view of the withdrawal of the charge allegation to which it pertains; modifies its requests to exclude documents reflecting employee medical information and to permit the redaction of employee social security numbers, birth dates, and banking information; limits the temporal scope of pars. 19-23 and 29-37; and deletes the word "all" from par. 55.

³ To the extent that the Employer has provided some of the requested material, it is not required to produce that information again, provided that the Employer accurately describes which documents under subpoena it has already provided, identifies to which subpoena paragraph(s) they are responsive, states whether those previously-provided documents constitute all of the requested documents, and provides all of the information that was subpoenaed.

See generally *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005 (9th Cir. 1996); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (4th Cir. 1996).

Dated, Washington, D.C., March 22, 2018.

MARVIN E. KAPLAN,	CHAIRMAN
MARK GASTON PEARCE,	MEMBER
LAUREN McFERRAN,	MEMBER

In addition, the Employer argues that pars. 23, 41, 43, and 45 should be revoked “to the extent [they seek] information that is not in [the Employer’s] possession, custody, or control” The Employer is not required to produce evidence requested in the subpoena that it does not possess, but the Employer is required to conduct a reasonable and diligent search for all requested evidence. Further, with respect to requested information not in the Employer’s possession, custody, or control, the subpoena compels the Employer to request such information from other persons or companies, if necessary (see pars. E and F of the subpoena’s definitions and instructions). If the information does not exist, or if the other persons or companies decline to provide the information, the Employer must affirmatively represent this fact to the Region. See *Clear Channel Outdoor, Inc.*, 346 NLRB 696, 702 fn. 10 (2006) (“In responding to a subpoena, an individual is required to produce documents not only in his or her possession, but any documents that he or she had a legal right to obtain,” citing *Searock v. Stripling*, 736 F.2d 650, 653 (11th Cir. 1984)). Moreover, if the other persons or companies do not comply with a request for the information from the Employer, nothing would prevent the Region from seeking that information directly from the other persons or companies.

In addition, the Employer’s request for a protective order is denied for lack of a showing of good cause. With respect to the Employer’s stated concerns about confidentiality, we find that it has failed to explain why the procedure set forth in paragraph “B.5.” of the subpoena’s Definitions and Instructions is not sufficient to address its concerns. However, if its concerns can be substantiated, the Employer may seek a confidentiality agreement from the Region.